

Order

Entered: November 2, 2004

Michigan Supreme Court
Lansing, Michigan

Maura D. Corrigan
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman
Justices

ADM File No. 2004-53

Amendment of Rules 9.124
and 9.126 of the
Michigan Court Rules

On order of the Court, the need for immediate action having been found, the notice requirements are dispensed with and the following amendments of Rules 9.124 and 9.126 of the Michigan Court Rules are adopted, effective immediately. MCR 1.201(D). The amendments will be considered at a future public hearing by the Court. The notices and agendas for public hearings are posted at www.courts.michigan.gov/supremecourt.

[Additions are indicated by underlining and deletions are indicated by strikeover.]

Rule 9.124 Procedure for Reinstatement

(A) Filing of Petition. An attorney petitioning for reinstatement shall file the original petition for reinstatement with the Supreme Court clerk and a copy with the board and the commission. ~~If the petition and the affidavit required by subrule (B)(1) are facially sufficient, and the petitioner has paid the publication fee required by subrule (B)(2), the board shall assign the petition to a hearing panel. Otherwise, the board may dismiss the petition without prejudice.~~

(B) Petitioner's Responsibilities.

(1) Separately from the petition for reinstatement, the petitioner must file, serve only upon the administrator a personal history affidavit. The affidavit is to become part of the administrator's investigative file and may not be disclosed to the public except under the provisions of MCR 9.126. The affidavit must contain~~contemporaneously with and as a part of the petition for reinstatement, a personal history affidavit containing the following information:~~

(a)-(1) [Unchanged.]

(2) The petitioner must, contemporaneously with the filing of the petition for reinstatement and service on the administrator of the personal history affidavit, remit

- (a) to the administrator the fee for publication of a reinstatement notice in the Michigan Bar Journal.
- (b) to the board the basic administrative costs required under MCR 9.128(B)(1)
 - (i) an administrative cost of \$750 where the discipline imposed was a suspension of less than 3 years;
 - (ii) an administrative cost of \$1,500 where the discipline imposed was a suspension of 3 years or more or disbarment.
- (3) If the petition is facially sufficient and the petitioner has provided proof of service of the personal history affidavit upon the administrator and paid the publication fee required by subrule (B)(2), the board shall assign the petition to a hearing panel. Otherwise, the board may dismiss the petition without prejudice.
- ~~(3)(4)~~ A petitioner who files the petition before the term of suspension ordered has fully elapsed must file an updated petition and serve upon the administrator an updated personal history affidavit within 14 days after the term of suspension ordered has fully elapsed. All petitioners remain under a continuing obligation to provide updated information bearing upon the petition or the personal history affidavit. ~~must file updated petitions and personal history affidavits with the hearing panel when the reinstatement hearing convenes. The supplemental filings must indicate any pertinent information that has changed since the previous filing.~~
- ~~(4)(5)~~ The petitioner must cooperate fully in the investigation by the administrator into the petitioner's eligibility for reinstatement by promptly providing any information requested. If requested, the petitioner must participate in a recorded interview and answer fully and fairly under oath all questions about eligibility for reinstatement.

(C)-(E) [Unchanged.]

Rule 9.126 Open Hearings; Confidential Files and Records

(A)-(B) [Unchanged.]

- (C) Papers. Formal pleadings, reports, findings, recommendations, discipline, reprimands, transcripts, and orders resulting from hearings must be open to the public. A personal history affidavit filed pursuant to MCR 9.124(B)(1) is a

confidential document that is not open to the public. This subrule does not apply to a request for a disclosure authorization submitted to the board or the Supreme Court pursuant to subrules (D)(7) or (E)(5).

(D)-(F) [Unchanged.]

Staff Comment: The amendments of MCR 9.124(B)(1) require a petitioner for reinstatement to file a personal history affidavit only with the grievance administrator and prevent its disclosure to the public except as provided by MCR 9.126. The amendment of MCR 9.124(B)(2) clarifies that a petition for reinstatement must be accompanied by both a publication fee and administrative costs imposed by MCR 9.128(B)(1). The amendment of MCR 9.126(C) clarifies that a personal history affidavit filed pursuant to MCR 9.124(B)(1) is a confidential document and is not open to the public.

The staff comment is not an authoritative construction by the Court.



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 2, 2004 Corbin R. Davis
Clerk